

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-211-C – ORDER NO. 2004-567
NOVEMBER 15, 2004

IN RE:	Application of Tennessee Telephone Service,)	ORDER
	LLC DBA Freedom Communications USA,)	GRANTING
	LLC for a Certificate of Public Convenience)	CERTIFICATE
	and Necessity to Provide Local Exchange and)	
	Interexchange Telecommunications Services)	
	in South Carolina and for Flexible Regulation)	
	and Modified Alternative Regulation.)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Tennessee Telephone Service, LLC DBA Freedom Communications USA, LLC (“Applicant”, “Freedom” or the “Company”) for authority to provide local exchange and interexchange telecommunications services within the State of South Carolina (the “Certification Application”).

Further, the Company requests that the Commission regulate its local retail telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business interexchange service offerings under modified alternative regulation.

The Company’s Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2003), S.C. Code Ann. Section 58-9-585 (Supp. 2003) and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

Subsequently, counsel for SCTC filed with the Commission a Stipulation. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on October 20, 2004, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Randy Mitchell, Chairman, presided. Bonnie D. Shealy, Esquire, represented the Company. F. David Butler, General Counsel, represented the Commission Staff. Matthew T. Davis, Chief Executive Officer of the Applicant, appeared and testified in support of the Application.

According to the record, Freedom is a Tennessee Limited Liability Corporation. Mr. David testified that the Applicant is certificated to provide telecommunications services in 3 states and has applications pending in another 5 states. The Applicant has received authority from the South Carolina Secretary of State to transact business within the State of South Carolina.

According to Mr. Davis, Freedom will provide resold local exchange telecommunications services and resold interexchange telecommunications services. The Applicant's services will be marketed and provided primarily to residential and small business customers and will offer such services on a twenty-four (24) hour a day, seven (7) day a week basis. The Company does not plan on offering long distance service without local services. Calls will be billed directly by the Applicant to its customers. Freedom does not own any facilities itself which will be used in the transmission, switching, or routing of calls.

Mr. Davis further testified regarding the managerial experience of the Company's executives as well as the financial status of the Company. Mr. Davis also testified that the Company had substantial financial resources to ensure the viability of the Company. Both a resume of the key personnel and senior management and recent financial reports of the Company were submitted in evidence.

Mr. Davis finally testified that granting Freedom's Application will introduce a telecommunications service provider committed to providing high-quality, innovative, and technologically advanced services that will further increase telecommunications competition in the State of South Carolina. He opined that the Commission's granting of the Application is therefore in the public interest.

Mr. Davis asserted that the Company will operate in compliance with all applicable statutes, regulations, and Commission orders. Further, Mr. Davis testified that Freedom has never had authority denied in any state where it has applied for authority nor has the company had authority revoked in any state where it has been granted

authority. Mr. Davis stated that the Company will abide by all applicable Commission rules, regulations and Orders upon the Company receiving certification to provide intrastate interexchange and local exchange telecommunications services in South Carolina.

Mr. Davis also discussed the Company's request for certain waivers of Commission regulations. The Company requests that it be exempt from any rules or regulations that would require it to keep financial records in conformance with the Uniform System of Accounts ("USOA"). Additionally, the Company seeks a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 & Supp. 2003) so that it will not be required to publish local exchange directories. The Company will contract with at least one incumbent local exchange carrier (or its directory publishing affiliate) for the inclusion of the Company's CLEC databases into the master customer database of the local exchange carrier. At the hearing, Mr. Davis also requested that the Company be granted a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976 & Supp. 2003) so that the Company be permitted to maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Dickson, Tennessee.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Company is a duly organized limited liability corporation which exists under the laws of the State of Tennessee and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. The Company is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2003).

4. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

5. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 2003).

6. The Commission finds that the services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 2003).

7. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. Following execution of the Stipulation with the SCTC, the SCTC withdrew its opposition to the Application.

CONCLUSIONS OF LAW

1. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the competitive local exchange and interexchange telecommunications services as described in the Application.

2. The Commission concludes that the Company's "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

4. The Commission concludes that the Company will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange services by the Company will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission determines that a statewide Certificate of Public Convenience and Necessity should be granted to the Company to provide competitive local exchange services. The terms of the Stipulation between the Company and SCTC are approved and adopted as a part of this Order. Any proposal to provide local telecommunications service to rural service areas is therefore subject to the terms of the Stipulation. In addition, the Company is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the

same LATA through the resale of services offered by other carriers in accordance with tariffs approved by the Commission.

7. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

8. The Commission adopts a rate design for the long distance services of the Company consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997.

Under the Commission approved modified alternative regulation, the business service offerings of the Company, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However,

pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to the Company also.

9. With regard to the residential interexchange service offerings of the Company, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

10. With regard to residential interexchange service rates, the Company shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the

Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to Tennessee Telephone Service, LLC DBA Freedom Communications USA, LLC to provide competitive local exchange and interexchange telecommunications services, via resale.
2. The terms of the Stipulation between the Company and the SCTC is approved and adopted as part of this Order. The Stipulation is attached as Order Exhibit 1. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of the Stipulation.
3. The Company shall file, prior to offering local exchange services in South Carolina, a local service tariff with the Commission.
4. The Company shall file, prior to offering interexchange services in South Carolina, a long distance tariff with the Commission.

5. The Company is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that, for access charge purposes, resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. To the extent the Company resells interexchange services, the Company shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If the Company changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, the Company shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission ("FCC"), pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

9. To the extent the Company may provide end user retail services, Freedom shall be required to comply with Title 23, Chapter 47, South Carolina Code of Laws Ann. which governs the establishment and implementation of a "Public Safety

Communications Center,” which is more commonly known as a 911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, Freedom is directed to contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

10. When and if the Company initiates retail services offerings in South Carolina, the provisions of this Paragraph shall apply. The Company shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, the Company shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial

information with the Commission can be found at the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. The two-page form the Company shall use to file this information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS," and shall be filed with the Commission by April 1st of each year. Be advised that the Commission's annual report for telecommunications companies requires the filing of intrastate revenues and intrastate expenses. Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

11. In addition, when the Company offers retail local exchange services, the Company shall be required to file annual report information for competitive local exchange carriers. The form the Company shall use to file its annual financial information with the Commission can be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. This form is entitled "Annual Report for Competitive Local Exchange Carriers" and consists of four pages. Additionally, the Company shall file with the Commission a quarterly report entitled "CLEC Service Quality Quarterly Report." The proper form for this report is found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests

and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

The Company shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced. The Company shall also file with the Commission a copy of their general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2003).

13. The Company shall conduct its businesses in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

14. The FCC in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by

July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>

15. By its Application, the Company requested a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 and Supp. 2003). In lieu of publishing local directories, the Company informs the Commission that it will contract with the incumbent LECs to provide the Company's customers with directory listings, as well as to undertake the distribution of directories. The Commission finds the Company's requests reasonable and grants the requested waiver of the application of 26 S.C. Code Ann. Regs. 103-631 (1976 and Supp. 2003). Further, the Company is granted a waiver of 26 S.C. Regs. 103-610 (1976 and Supp. 2003) requiring the Company to maintain its financial books and records within the State of South Carolina. The Company is hereby granted permission to maintain its financial books and records at its principal headquarters in Dickson, Tennessee. Further, the Company is granted a waiver of the requirement that books and records be maintained in accordance with the Uniform Systems of Accounts ("USOA"). The Company is directed to comply with all Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)